

REMARKS

The Examiner rejected claims 29-33 under 35 U.S.C. 102(e) over US 2002/0141994 A1, and also rejected Claims 29, 30 and 34 over this same reference in view of either of U.S. Patent Nos. 5,444,153 or 5,662,609. However, as discussed below the US '994 publication does not have an effective filing date prior to Applicants' invention date. As such, US '994 does not constitute a proper prior art reference under 35 U.S.C. 102(e).

The Examiner indicated that the US '994 publication qualified as prior art under § 102(e) because the "effective filing day of US '994 publication is March 20, 2000 and thus **does constitute** prior art under 35 U.S.C. 102(e)." However, the Examiner also acknowledged the Declaration of Dr. Hamilton and Dr. Anderson under 37 C.F.R. 1.131, and that "said Declaration indicated that the claimed subject matter was invented and reduced to practice prior to March 20, 2000." In view of this Declaration, the invention by Applicants occurred prior to the March 20, 2000 date stated to be the effective filing date of the US '994 publication by the Examiner. Accordingly, even if the US '994 publication were entitled to an effective filing date on March 20, 2000, Applicants' Declaration provides ample evidence that Applicants' invention date was earlier than this date. As such, the US '994 publication does not qualify as prior art, and the rejections under 35 USC §§ 102(e) and 103 should be withdrawn.


The Examiner directed Applicants attention to the provisions of 37 C.F.R. 41.202 in order to suggest an interference. However, Applicants submitted the Declaration under 37 C.F.R. 1.131 to swear behind the '994 publication, and not to suggest an interference. Thus, Applicants are not submitting the information set forth in 37 C.F.R. 41.202 at this time.

In view of the foregoing, the application is believed to be fully in condition for allowance. No fees are believed due. However, please charge any fees that may be required, including any fees for extension of time to Deposit Account No. 11-1410.

Respectfully submitted,

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